MANIAM SUPPIAH & ANOR.

v.

NG NEOH HA & ORS.

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CIVIL APPEAL NO. 12-09-88]
25 FEBRUARY 1990

CIVIL PROCEDURE: *Whether amendment of pleadings should be allowed after considerable delay - Mala fides - Limitation - Special damages in dependency claims - Rules of the High Court 1980, O. 20 r. 5(2).*

This is an appeal from the decision of the Judge of the Sessions Court who had allowed amendments in the plaintiff's pleadings after a considerable delay. It was not disputed that the practical effect of allowing the amendments was that if the plaintiff succeeded in the claim, a higher quantum in damages would be awarded. The amendments sought to introduce new claims for special damages in respect of dependency claims. The Sessions Court did not find any evidence of *mala fides* on the part of the plaintiff in asking for the amendments so late in the day.

Held:

[1] The amendments relating to the dependency claims were made well before the expiry of the limitation period.

[2] In any case, , O. 20 r. 5(2) of the Rules of the High Court 1980 permits an amendment to be made after any relevant period of limitation has expired notwithstanding that the effect of the amendment would, *inter alia*, add a new cause of action if the cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which a relief has already been claimed.

[Appeal dismissed. No order as to costs.]

Case referred to:
Hock Hua Bank Bhd. v. Leong Yew Chin [1987] CLJ (Rep) 126

Legislation referred to:
Rules of the High Court 1980, O. 20 r. 5(2)

For the 1st & 2nd defendants/appellants - Y.B. Dato' Hj. Abdul Malik bin Hj. Ishak
For the 3th & 4th defendant/appellants - Lal Harcharan Singh; M/s. L.H. Singh & Co.
For the 5th & 6th defendants/appellants - Gerard Chan; M/s. Lim Kean Siew & Co.
For the respondents - Visvanathan; M/s. Syarikat Visva

JUDGMENT

KC Vohrah J:

In allowing the amendments as the Judge of the Sessions Court did, it is clear if the plaintiffs succeed in their claims a higher quantum in damages would stand to be awarded because of the amendments being allowed but that is no reason for disallowing the amendments. As to whether there is *mala fides* on the part of the plaintiffs in prosecuting their amendment after considerable delay the learned Judge could not see any; nor can I and the point was not pursued, rightly, with any vigour.

It would appear that Counsel for the plaintiffs only appreciated the legal reasons requiring the amendment late in the day.

The crux of the appeal relates to the question of limitation. As regards the question of limitation the amendments relating to the claims for dependency were made well before the expiry of the limitation period. What the amendments sought to do were to introduce, generally speaking, claims for special damages in respect of the dependency claims. Order 20 r. 5(2) allows for an amendment to be made after any relevant period of limitation has expired notwithstanding that the effect, *inter alia*, of the amendment will be to add a new cause of action if the cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to amendment. The new amendments amount to a prayer for special damages for the dependants who have already been disclosed within the limitation period and who survived their deceased mother - there is a new relief but there is no bar to granting the amendment on that ground - see *Hock Hua Bank Bhd. v. Leong Yew Chin* [1987] CLJ (Rep) 126.

So as far as I am concerned the Judge of the Sessions Court has exercised her discretion properly. Appeals dismissed with costs. I thank all Counsel for assisting me in this difficult area of law.

Also found at [1990] 2 CLJ 429